

**AFFIDAVIT OF WILLIAM C. KELLEHER**

STATE OF CALIFORNIA       §  
  §  
COUNTY OF VENTURA       §

BEFORE ME, the undersigned authority, on this day personally appeared William C. Kelleher, who after being by me duly sworn, did depose and state the following:

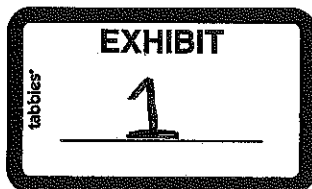
My name I William C. Kelleher. I presently live at 4136 Harbour Island Lane, Oxnard, California. I have leased a home at this address since November 1, 2010. Before November of 2010, my primary residence was at my home at 18 Mariners Lane, Kemah, Texas. I moved to Oxnard, California, in late 2010, to be closer to my 14 year old daughter; however, I would spend time in my home in Kemah from time to time, and I continued to consider my home in Kemah as being my primary residence even though most of my time was being spent in a rented home in California or traveling overseas for work. In December of 2012 I leased my home in Kemah to another individual. That lease ran until May of 2013. My home in Kemah was vacant from May until November 1<sup>st</sup> of this year when I leased it again.

Since April 2010, I have been employed with New World Oil & Gas, a company based in London, England. My job with New World requires me to frequently travel frequently abroad.

On January 26, 2007, I took delivery of a new J-145 sailing yacht that I purchased. The J-145 that I purchased was a 48 foot racing sailing yacht. It was a new vessel. I named it the NEFTEGAZ. I paid Sittle Marine, the J-Boat manufacturer, NKE the electronics provider, Kolius Yacht Service who commissioned the yacht, and North Sail the sail manufacturer, approximately \$1.2 million to build and deliver the yacht and make it seaworthy and race ready. Attached hereto as Exhibit A is a true and correct copy of the Condition & Value Survey that I received in 2007 when I purchased the boat. It showed that the boat had a replacement cost of \$950,000.00 and a Fair Market Value of \$875,000.00.

In February of 2008, I borrowed \$585,000.00 from Texas Community Bank and pledged the J-145 NEFTEGAZ as security for the Promissory Note that I signed in favor of Texas Community Bank dated February 1, 2008.

In 2010, I experienced difficulties with my business and I was no longer able to continue to make payments to Texas Community Bank under the Promissory Note. I was in contact with Texas Community Bank and spoke to a Mr. Lee Prince who identified himself as being a Vice President of the bank with responsibility for handling the foreclosure on my yacht. Mr. Lee advised me that the bank's only option was to



repossess the yacht. He asked me where the boat was located and maintained. I advised him the yacht was in dry storage, out of the water, located at Gulf Coast Composites in Kemah, Texas. He sounded very familiar with the type and make of this yacht. Shortly thereafter, Mr. Lee called me on the telephone, said that he saw the yacht, and he told me that he was very impressed with the yacht and its condition. He advised me Texas Community Bank was taking possession of the yacht and not to remove anything from the vessel. I told him that I would fully comply with his request, and I followed that promise.

In approximately February of 2011, I was contacted by Charles Getman, an attorney for Texas Community Bank. Mr. Getman told me that the bank had filed a suit and he asked me to waive service of the Summons for that lawsuit. I signed the Waiver of Service attached hereto as Exhibit "B." On April 18, 2011, I received an email from Mr. Getman and I responded to that email on April 19, 2011, providing Mr. Getman with my contact information and asking him to provide to me a copy of the Complaint filed with the Court. In my email, I told Mr. Getman that I would plan to attend the conference set by the Court in the lawsuit on May 20, 2011. Mr. Getman's email to me and my reply email are attached as Exhibit "C;" however, I no longer have access to my emails from 2011 from my account with AOL and I cannot produce the attachment referenced by Mr. Getman in his April 18 email to me. Nevertheless, I recognize Exhibit "C" as being the emails that were sent between Mr. Getman and myself on the dates referenced. These emails were attached to a filing with this Court in documents that I saw for the first time during the week of November 4. My email account with AOL was terminated in July of 2012 when I had concerns about someone possibly hacking into my email account with AOL.

Between April 19, 2011 and May 20, 2011, on a date that I believe was approximately May 15, 2011, I spoke on the telephone with Lee Prince about the lawsuit and the bank's efforts to assume ownership of the NEFTEGAZ. During this telephone call, Mr. Prince, whom I understood to be the vice president of the bank that was suing me and whom I understood to be the officer of the bank with responsibility for taking possession of and selling my yacht, told me the bank was going to sell the yacht. Mr. Prince told me that due to the condition and current value of the yacht, he felt certain that the yacht would sell for a value greater than the balance due on the loan. Mr. Prince told me that he was going to sell it through a qualified yacht broker and then contact me and tell me what they sold it for. Based upon my conversation with Mr. Prince, and in particular his statement to me that the bank's intention was to sell the yacht for a value greater than the balance owed on the loan, I did not appear at the hearing with the Court on May 20, 2011. It was my understanding from the totality of my telephone conversation with Mr. Prince that I did not need to participate in the lawsuit or hire an attorney to represent me in that lawsuit because the yacht was already in the possession of the bank and would be

sold for enough money to resolve all of the claims asserted against me in the lawsuit. I expected, based upon my conversation with the vice president of the bank that if anything changed with regard to the bank's course of action or the lawsuit, I would be advised and given an opportunity to make an appropriate response or take appropriate action.

In October of 2013, I was contact through a letter dated October 21, 2013 by Roy Camberg, an attorney who was representing Austin Settlement, L.P. Mr. Camberg's letter was addressed to my leased home in Oxnard, California. It included an Application For Turnover Relief and an Order. In that document, I was informed for the first time that Texas Community Bank had obtained a Judgment against me on November 18, 2011, in the amount of \$678,846.25 and had sold or assigned that Judgment to Austin Settlement, L.P. After receiving Mr. Camberg's letter, I contacted Loyd Neal, and attorney in Houston, Texas, about the Application For Turnover Relief and the lawsuit and Judgment described in that document.

On November 7, 2013, I was able to see for the first time various motions and orders filed with the Court by or on behalf of Texas Community Bank that my J-145 sailing yacht, the NEFTEGAZ had been "sold" by a United States Marshal on September 22, 2011 to Texas Community Bank had purchased the yacht for \$10,000.00 . According to Plaintiff's Motion to Confirm Foreclosure Sale, and For Entry of Final Judgment (which I saw for the first time on November 7, 2013), notice of the sale had been published in The Daily Court Review and then "sold" by the United States Marshal who received a commission of \$165.00 for that transaction. The Notice of Sale did not give any descriptive information about the model or value of the M/V NEFTEGAZ. Clearly, Texas Community Bank did not use a qualified yacht broker to properly advertise and sell this J-145 vessel, did not use commercially reasonable efforts to sell a sailing yacht, and did not receive anything even remotely close to the fair market value of that sailing yacht at the sale which apparently took place at the U.S. Marshal's Service in Houston. In my opinion, my 2007 J-145 sailing yacht had a fair market value of well over \$700,000.00 in September of 2011. Attached hereto as Exhibit "D" is a listing in Sail Boat Authority-Sail Northwest, a recognized publication for the sale of high end vessels, for a 2003 J-145 listed for sale at a price of \$700,000.00 on November 6, 2013. My boat, delivered new in 2007, would presumably list for, and should be sold for, a considerably higher amount than a 2003 J-145.

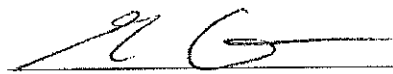
November 7, 2013, was the first time that I saw the various pleadings , motions, and orders that had been generated and filed in Case No. 4:11-cv-00655 styled *Texas Community Bank, N.A. vs. M/V NEFTEGAZ, Her Engines, Tackle, Appurtenances, etc., in rem and William C. Kelleher, in personam*, in the United States District Court for the Southern District of Texas. I was not aware until I received Mr. Camberg's letter in October of 2013 about any of the proceedings that had occurred in Court between February of 2011 and October of 2013. To the best of my knowledge, I never received a

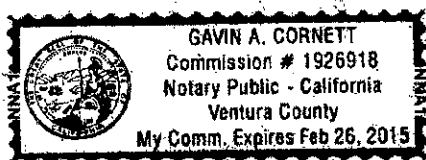
copy of the Complaint that I requested from Mr. Getman in April of 2011, and I never received the subsequent documents that were filed with the Court thereafter. Had I known about the bank's efforts to "sell" the boat to itself for a \$10,000.00 credit bid or had I known about the bank's intention and/or efforts to obtain a deficiency judgment against me, through the lawsuit or otherwise, I would have retained an attorney and defended the case and protected my position.

All of the exhibits attached hereto are true and correct copies of the originals based upon my personal knowledge. I have read the foregoing Affidavit, and all of the statements set forth above are true and correct based upon my personal knowledge.

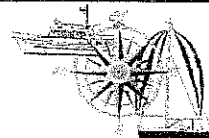
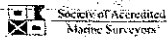
  
\_\_\_\_\_  
William C. Kelleher

9 SUBSCRIBED AND SWORN TO before me by the said William C. Kelleher on this  
day of November, 2013.

  
\_\_\_\_\_  
Notary Public in and for the State of ~~Texas~~  
California







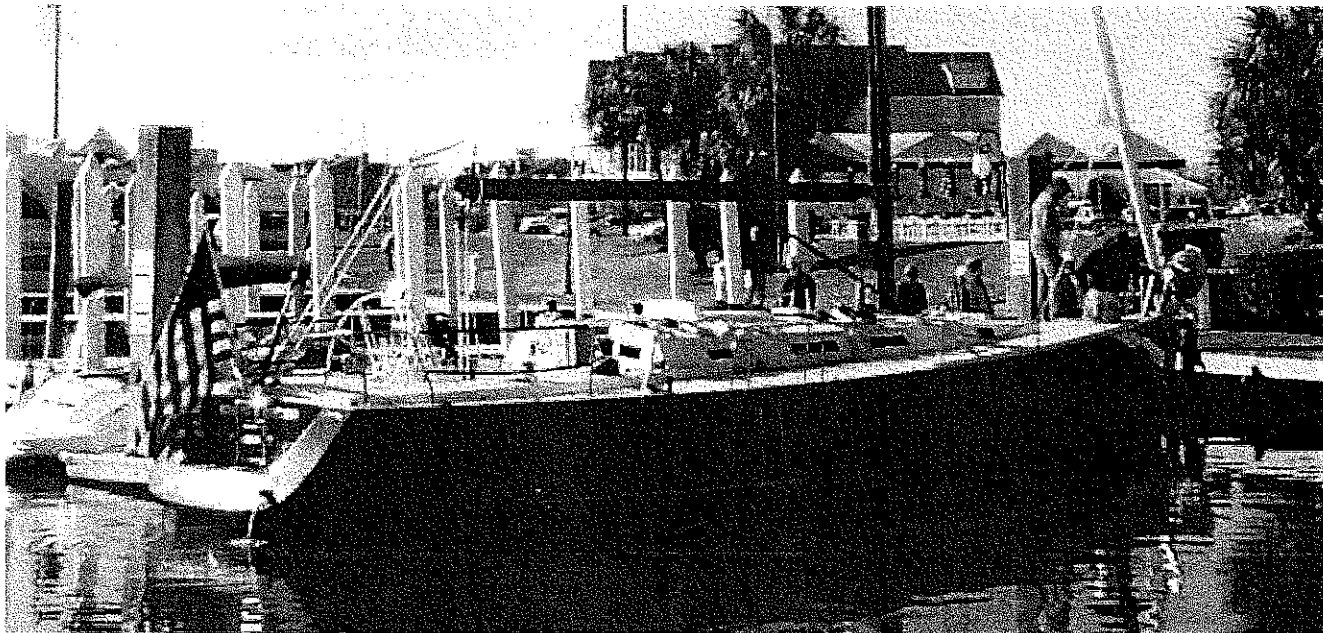
16 Bridge Street  
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ERIC W. BAITTINGER  
Marine Surveyor & Consultant  
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**CONDITION & VALUE SURVEY**

**REPORT DATE: January 31, 2007**



**VESSEL & SURVEY INFORMATION:**

**VESSEL NAME:** NefteGaz

**OWNER:**

**HAILING PORT:** London, England

William Kelleher  
18 Mariner Lane  
Kemah, Texas 77565

**BUILDER:** Pearson Composites LLC

**USCG OFFICIAL NO.:** Not applicable

**L.O.A.:** 48.1'

**DRAFT:** 8.9' / 7.5'

**SURVEY DATE:**

**SURVEY REQUESTED BY:**

**VESSEL LOCATION AT SURVEY:**

**REPLACEMENT COST:** \$950,000

**INTENDED USE OF VESSEL:**

**YEAR/MODEL:** 2006 / J-145

**HIN:** PCX14018D606

**STATE REGISTRATION NO.:** Not applicable

**L.W.L.:** 42.5'

**BEAM:** 13.0'

**DISPLACEMENT:** 19,000 lbs. **BALLAST:** 8,350 lbs.

September 29, 2006; January 24 & 25, 2007

William Kelleher

Pearson Composites LLC, Warren, RI; Lakewood Yacht Club,  
Seabrook, TX

**FAIR MARKET VALUE:** \$875,000

Offshore racing and cruising eastern US and Gulf of Mexico  
waters

**USCG/CFR/ABYC/NFPA COMPLIANCE:** Yes, pending compliance with surveyor's recommendations.

**APPROVED FOR INSURANCE:** Yes, pending compliance with surveyor's recommendations.

**SUITABLE FOR INTENDED USE:** Yes, pending compliance with surveyor's recommendations.

**EXHIBIT**

tabbies

A

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Marine, LLC**

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**VESSEL DESCRIPTION:**

**GENERAL:**

This is a new vessel and found to be in overall excellent condition. Specific findings and recommended actions are as described below.

This is a dark and light blue hulled, fractionally rigged sloop with the name in large red letters on each side, other hull graphics, red and white boot stripes, black sail cover, and retractable bow sprit.

**INTERIOR ARRANGEMENT:**

The forward cabin has a double vee berth. Next aft to port is an enclosed head with shower stall. The main cabin has settees port and stbd. The navigation desk is aft to stbd. The galley is aft to port. The aft cabin with double berth is in the stbd quarter. The aft head is accessed aft of the galley.

**SCOPE OF SURVEY:**

This is to certify that the undersigned surveyor did, at the request of Bill Kelleher, survey the vessel to determine the vessel's present condition and value. The survey was conducted at Pearson Composites, LLC, Warren, RI, and Lakewood Yacht Club, Seabrook, TX, by the undersigned. The vessel was surveyed while inside the factory building in Rhode Island and after being launched and rigged in Texas.

The vessel was observed both in and out of the water and during a sea trial. Systems operated are as noted in the report.

The survey is based on a visual inspection of accessible areas and available equipment. Attention was paid to the installation and condition of mechanical, electrical, and electronic systems and components where observation was possible. Areas and components that require test boring or tools to access have not been inspected. Areas of the hull that were inaccessible without dismantling of cabin soles, ceilings, and cabinetry were not inspected. This report does not guarantee that all defects were noted. Dimensions and construction details of the vessel were taken from information compiled by the builder and published sources in the industry. Standards in the industry as set forth by the U.S. Coast Guard (USCG)/Code of Federal Regulations (CFR), along with the American Boat and Yacht Council (ABYC) and the National Fire Protection Association (NFPA), will be used in reporting the findings of the surveyor. Fair market value was determined based upon information from publications of the trade.

The surveyor is not responsible in any way, financially or otherwise, for the implementation of recommendations as listed, including, but not limited to diagnosis, repair, or replacement of equipment, systems, or components, storage or dockage, or any other associated costs. This survey is limited to the use of the person for whom it was performed and his/her authorized representatives and for the purpose for which it was performed.

**SURVEYOR'S RECOMMENDATIONS**

**PRIORITY ITEMS – ACCOMPLISH PRIOR TO LAUNCH/OPERATION OF VESSEL:**

1. None.

**IMPORTANT ITEMS - ACCOMPLISH AT EARLIEST OPPORTUNITY:**

1. Re-route the wheel well drain hose in the stbd lazarette locker to eliminate crimping between the stbd upper rudder bearing support post and the stiffener to stbd of the post.
2. Install backing washers on the middle of three securing bolts for the traveler control blocks at each end of the traveler both port and stbd sides.
3. Connect the anchor chain and rode to the anchor; secure all shackle pins with seizing wire.
4. Investigate the cause for the difficulty experienced priming the forward head sump pump prime; correct as necessary.

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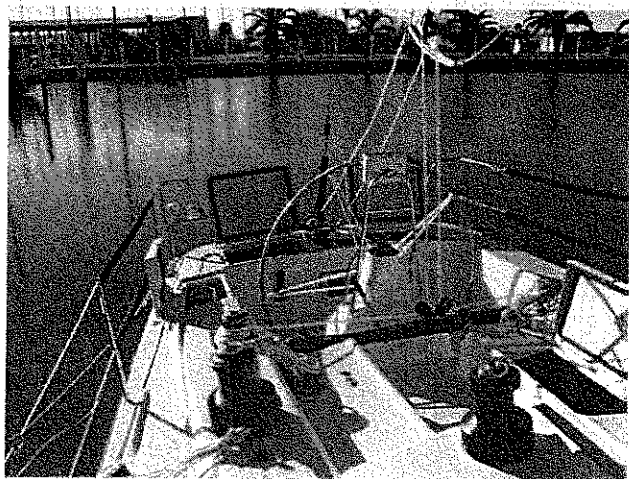
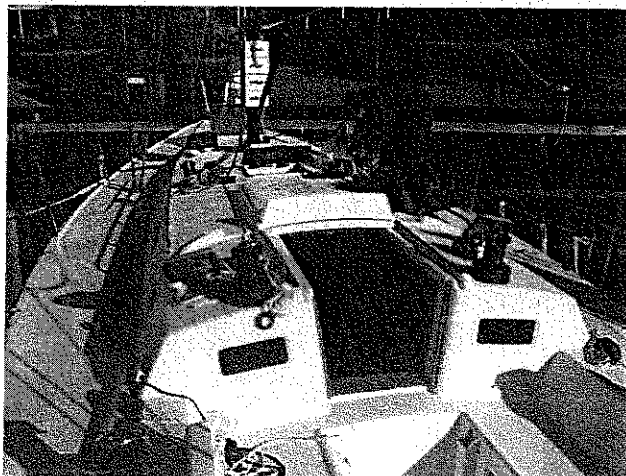
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5. Install reef line/lines in boom.
6. Mount the fire extinguishers on bulkheads.

**ADDITIONAL ITEMS:**

1. Maintain full USCG safety, visual signaling, sound producing, first aid, and fire extinguishing equipment inventory aboard at all times.
2. Carry a ship's bell as required on vessels greater than 12 m in length.
3. Carry a copy of the Rules of the Road as required on vessels greater than 12 m in length.
4. Make frequent inspections of the saildrive and zinc anode; maintain zinc anode as needed.
5. Install carbon monoxide and propane detection/alarm units.
6. Adjust the latch on the forward door of the stbd locker in the forward cabin.
7. Adjust the latch on the galley sink/trash bin locker door.
8. Reinstall/align the stbd upper barrel bolt for the engine access at the companionway.
9. Install a second securing screw, if possible for the aft vertical trim piece beneath the electric winch base in the aft head.
10. Take a turn on all hose clamps.
11. Ensure that all through hull hoses are double clamped at the through hull fitting if the hose barb is long enough.

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**REPORT OF SURVEY**

**1. EXTERIOR:**

**HULL AND DECK:**

**HULL MATERIAL/CONSTRUCTION:** Sandwich construction using unidirectional carbon fiber with biaxial E-glass and end grain balsa core in the female mold technique.

**HULL THICKNESS:** Not observed.

**HULL TO DECK JOINT:** Deck mounted on inward facing flange of hull, fastened with Plexus MA550 adhesive.

**HULL:** Sound. Tapped sound with hammer in all locations. No evidence of delamination or voids observed.

**BOTTOM PAINT:** None when inspected in RI; not observed after launch in TX.

**KEEL:** Nickel/aluminum/bronze alloy strut keel with lead bulb. Deep racing and shoal cruising keels available. No keel installed in RI; shoal keel installed but not observed after launch in TX.

**RUDDER:**

- Carbon fiber reinforced composite rudder blade and custom carbon rudder shaft mounted in composite rudder bearings.
- Sound. Tapped sound with hammer in all locations. No evidence of delamination or voids observed.

**DECK:** FRP with foam core and non-skid applied; sound. Tapped sound with hammer in all locations. No evidence of delamination or voids observed.

**CABIN/COACH ROOF:** Sound. Tapped sound with hammer in all locations. No evidence of delamination or voids observed.

**COCKPIT:** Sound. Tapped sound with hammer in all locations. No evidence of delamination or voids observed.

**GUNWALE/TOE RAIL:** Molded FRP. Sound. Tapped sound with hammer in all locations. No evidence of delamination or voids observed.

**RAILINGS/LIFELINES:**

**BOW RAIL:** Single stainless steel rail with lower lifeline extending to forward rail, 25" high, 1" diameter; sound.

**STERN RAIL:** Double stainless steel rail, 24" high, 1" diameter; sound.

**STANCHIONS:** Stainless steel, 25" high, 1" maximum diameter; six per side; sound.

**LIFELINES:** Double stainless steel wire, 3/16" diameter; sound.

**BOARDING GATES:** Port and stbd amidships and across transom; sound.

**BOARDING LADDER:** Folding stainless steel; 1" diameter; four rungs with synthetic treads; sound.

**HAND RAILS:** Stainless steel, 1" diameter; port and stbd on cabin roof; sound.

**SWIM PLATFORM:** Integral molded FRP; sound

**VENTILATION/ACCESS:**

**HATCHES:**

- Bow: 24" x 24".
- Forward port: 10" x 10".
- Mid cabin: 19" x 19".
- Aft cabin top: two 8" x 8".



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**PORTS:**

- Port:
  - Two 14" x 4".
  - Two 30" x 4".
- Stbd:
  - Two 14" x 4".
  - Two 30" x 4".
- Cabin aft face:
  - Two 12" x 5".
- Cockpit foot well:
  - Two 12" x 5".

VENTS/DORADES: None observed.

**GROUND TACKLE/MOORING:**

ANCHORS: Guardian G-37 pivoting fluke type.

RODE: 9/16" diameter three strand polyester line; length unknown. Not attached to anchor or chain. See recommendations.

CHAIN: 5/16" link diameter galvanized; length unknown. Not attached to anchor or chain. See recommendations.

WINDLASS: Lewmar V2 Concept/Ocean 1. Operation confirmed.

ANCHOR ROLLER/BOW PLATFORM: Removable stainless steel with single polyethylene roller.

TOWING BITTS: None.

**DECK DRAINS/SCUPPERS:**

COCKPIT DRAINS: Port and stbd aft to molded FRP through hull fitting. Double hose clamps installed.

STEERING WHEEL WELL DRAIN: Centerline hose to molded FRP through hull at transom. Double hose clamps installed. Hose is crimped between the stbd upper rudder bearing support post and the stiffener to stbd of the post. See recommendations.

**DAVITS:** None.

**UNDERWATER MACHINERY:**

PROPELLER: Flex-O-Fold 18 two bladed bronze; folding. Satisfactory.

SHAFT: Not applicable with saildrive.

CUTLASS BEARING: Not applicable with saildrive.

STRUT: Not applicable with saildrive.

PROPELLER PROTECTION: Keel.

ZINC ANODES: Ring zinc forward of propeller on saildrive. See recommendations.

ELECTROLYTIC CORROSION: None.

THROUGH HULLS: Satisfactory.

INTAKE STRAINERS: Satisfactory.

BOW THRUSTER: None.

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**2. RIGGING:**

**RIG TYPE:** Fractional sloop.

**SPARS:**

MAST: Carbon fiber; in excellent condition to height observable. 7/8" sail track and 7/8" storm trysail track installed.

MAST STEP: Keel stepped; excellent condition prior to mast installation.

SPREADERS: Triple carbon fiber spreaders; condition not observed.

BOOM: Aluminum; excellent condition.

BOWSPRIT: Carbon fiber 5-1/2", retractable; excellent condition.

**STANDING RIGGING:**

STAYS/TURNUCKLES/TOGGLES: Navtec stainless steel rod; excellent condition.

- Forestay: not observed under roller furler/foil.
- Backstay: 5/16" diameter.
- Upper shrouds: 7/16" diameter.
- Intermediate shrouds: Not observed.
- Lower shrouds: 3/8" diameter.
- Mast tie rod: 3/16" diameter.

CHAIN PLATES: Sound.

HEAD FOIL/ROLLER FURLER: Harken MK III furler; aluminum head foil with double sail slots; excellent condition. Operation confirmed

**RUNNING RIGGING:** All in excellent condition.

**HALYARDS:**

- Main: 3/8" double braided line.
- Genoa: Two 7/16" double braided line.
- Spinnaker: Two 7/16" spectra line.

MAIN SHEET: Multi-part 7/16" double braided line.

GENOA SHEETS: 7/16" double braided line.

GENOA FURLING LINE: 3/8" double braided line.

MAIN OUT HAUL: 1/4" double braided line with multi-part block system internal to boom.

MAIN REEF LINES: Boom rigged for two reef lines; none installed. See recommendations.

BOOM TOPPING LIFT: None.

BOWSPRIT OUTHAIL: 7/16" double braided line.

BOWSPRIT INHAUL: 1/2" double braided line.

GENOA CAR CONTROL LINES: 3/8" double braided line with 1/4 bungee cord.

CHECKSTAYS/RUNNERS: 7/16" double braided line to 5/16" spectra line.

**HYDRAULIC SYSTEM:**

BOOMVANG/BACK STAY ADJUSTER: Sailtec hydraulic system; operation station at cockpit pedestal. Boomvang model -17BV; backstay adjuster model -17LC; excellent condition. Both units operated satisfactorily. Hydraulic oil leak observed in hose to boomvang during sea trial. Hose replaced, system retested, and cause of hose puncture eliminated.

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**SAILING HARDWARE/FITTINGS:**

**TRACKS:**

- Forward inboard and outboard 1-1/4" genoa sheet tracks mounted on side decks port and stbd no cars; cars onboard.
- Aft 1-1/4" genoa sheet tracks mounted on side decks port and stbd with cars and associated hardware.

**TRAVELER:** Traveler car on 1-1/4" track with 7/16" double braided control lines mounted forward of steering pedestal.

**CLUTCHES/BLOCK:**

- Miscellaneous line clutches, turning blocks, and deck organizers installed.
- The middle of three securing bolts for the traveler control blocks at each end of the traveler, both port and stbd, do not have backing washers. See recommendations.

**WINCHES:**

**COCKPIT:**

- Two Lewmar 66 three speed, self-tailing, anodized aluminum. Operation confirmed.
- Two Lewmar 50 two speed, self-tailing, anodized aluminum. Operation confirmed.

**CABIN ROOF:**

- One Lewmar 54 two speed, self-tailing, anodized aluminum. Operation confirmed.
- One Lewmar 54 electric two speed, self-tailing, anodized aluminum. Operation confirmed.

**MAST BASE:**

- Two Lewmar 48 two speed, self-tailing, anodized aluminum. Operation confirmed.

**SAILS:** North Sails; all in excellent condition.

**CRUISING SAILS:**

- Kevlar main with Dutchman system with logo.
- 3DL genoa with UV cover.
- Cruising spinnaker with sock and logo.

**RACING SAILS:**

- 3DL main.
- 3DL Light to medium #1 genoa.
- 3DL heavy #1 genoa.
- 3DL #3 genoa.
- 250 sqm 2A runner.
- 180 sqm 3A reacher.

**3. INTERIOR:**

**CABIN SOLE:** Teak and holly; excellent condition.

**JOINERY:** Excellent condition.

- Latch on the forward door of the stbd locker in the forward cabin does not engage adequately. See recommendations.
- Latch on the galley sink/trash bin locker door does not operate smoothly/fully disengage to open. See recommendations.
- Stbd upper barrel bolt for the engine access at the companionway is not aligned properly; bolt is hard to release/ hard to secure. See recommendations.
- Aft head wood trim under electric winch cover: only the lower screw in the vertical trim piece engages the bulkhead to secure the trim piece. See recommendations.

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**FABRICS/CUSHIONS:** Excellent condition.

**BULKHEADS:** Excellent condition; tabbing sound where observable.

**OVERHEAD:** Vinyl FRP liner; excellent condition.

**BILGES:**

CONDITION: Clean.

ACCESS: Good.

**4. PROPULSION SYSTEM:**

**ENGINE:**

MANUFACTURER: Yanmar.

NUMBER/TYPE: Single inboard with saildrive.

MODEL: 4JH4E. Operation confirmed.

RATED POWER: 36.8 hp @ 2,607 rpm continuous / 40.5 hp @ 3,000 rpm maximum.

SERIAL NO.: E03427.

TURBOCHARGED: No.

ENGINE MOUNTING/BEDS/BULKHEADS/STRINGERS: Satisfactory.

HOSES/CLAMPS: Satisfactory.

OIL/COOLANT/SEAL LEAKS: None observed.

ENGINE DRIP PAN: Yes.

CONTROLS: Morse type cable throttle and shift.

INSTRUMENTATION: Tachometer, engine hours, coolant temperature, oil pressure.

**REDUCTION GEAR:**

MANUFACTURER: Yanmar.

MODEL: SD-50 YM1. Operation confirmed.

SERIAL NO.: 0770-05.

**FUEL SYSTEM:**

FUEL TYPE: Diesel.

FEED LINE: Approved hose USCG Type A1.

FUEL FILTRATION: Racor fuel oil/water separator model 230 with R20T element and on-engine filter.

FUEL SHUT OFF: At tank.

**COOLING SYSTEM:**

TYPE: Fresh water.

HOSES: Satisfactory.

SEA COCK: Integral with saildrive. Operated satisfactorily. Single hose clamp installed.

RAW WATER STRAINER: Vetus.

**EXHAUST SYSTEM:**

TYPE/HOSES: Cast mixing elbow to hose to lift muffler to hose to discharge at transom; approved hoses and double hose clamps installed.



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ERIC W. BAITTINGER  
Marine Surveyor & Consultant  
Surveyor Associate, SAMS®

16 Bridge Street  
East Greenwich, RI 02818

401-323-0304  
eric@smsri.com

**ENGINE COMPARTMENT:**

ACCESS: Good.  
VENTILATION: Natural and forced.  
BLOWER: Jabsco model 35440-0000; 4" diameter. Operation confirmed.  
DUCTING: 4" and 3" flexible; satisfactory.  
WIRE/EQUIPMENT SECURE: Yes.  
IMPROPER STORAGE: None observed.

**FUEL TANK AND CONNECTIONS:**

LOCATION: Beneath stbd settee.  
TANK MATERIAL: Aluminum. Tank pressure tested with air satisfactorily.  
CAPACITY: 57 gal.  
SECURED: Yes.  
BAFFLED: Unknown.  
VENT / RETURN LINES: Approved hose USCG Type A1.  
FUEL FILL HOSE: Approved hose USCG Type A2. Double hose clamps installed at tank and at deck fill fitting; deck fill fitting grounded.  
DECK FILL LOCATION: Stbd amidships.  
LABEL: Yes.

**5. MECHANICAL SYSTEMS:**

**STEERING SYSTEM:**

SYSTEM TYPE: Mechanical; cables via sheaves to rudder quadrant.  
STEERING STATION: Molded FRP steering pedestal with stainless steel guard; Edson Ultra-light Racing system with 60" wheel with leather cover.  
STEERING SYSTEM COMPONENTS: Satisfactory.  
EMERGENCY STEERING: Emergency tiller onboard.  
RUDDER BEARINGS/PACKING GLAND: Satisfactory.  
RUDDER FREEPLAY: Satisfactory.

**POTABLE WATER SYSTEM:**

PRESSURE WATER:  
– Jabsco pump model 36800-1000. Operation confirmed.  
– Jabsco accumulator tank model WX-101.  
WATER HEATER:  
– Atlantic Marine model 6TE.  
– Capacity 6 gal.  
– Engine coolant / 120 VAC heat source. Operation confirmed.  
SHORE WATER CONNECTION: None.  
PRESSURE REDUCING VALVE: None.  
WATER MAKER: None.  
GALLEY SINK: Double stainless steel basin with pressure and foot pump faucets.

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**GALLEY SINK DRAIN SEA COCK:** Marelon. Operated satisfactorily. Not bonded. Double hose clamps installed.

**FORWARD HEAD SINK:** Single molded FRP basin with pressure faucets.

**FORWARD HEAD SINK DRAIN SEA COCK:** Operated satisfactorily. Not bonded. Double hose clamps installed. (Shared with shower sump pump discharge).

**AFT HEAD SINK:** Single molded FRP basin with pressure faucets.

**AFT HEAD SINK DRAIN SEA COCK:** Operated satisfactorily. Not bonded. Double hose clamps installed. (Shared with shower sump pump discharge).

**SHOWER:** Yes; both heads and at transom. Flojet sump pump model 4105-143 installed in each head. Operation confirmed. Sump pump in forward head was difficult to get to prime; priming was possible after removing end plug in the sump pick up tube. See recommendations.

**POTABLE WATER TANK:**

**LOCATION:** Beneath port settee and beneath starboard quarter berth.

**TANK MATERIAL:** Polyethylene and synthetic bladder, respectively.

**CAPACITY:** 90 gal. total.

**SECURED:** Yes.

**BAFFLED:** Unknown.

**VENTED:** Yes.

**CLEAN OUT PLATE:** Yes.

**FILL LOCATION:** Port forward and stbd aft.

**FORWARD SANITARY SYSTEM:**

**MSD TYPE:** Raritan manual Type III MSD. Operation confirmed.

**FLUSHING WATER SEA COCK:** Marelon. Operated satisfactorily. Not bonded. Double hose clamps installed.

**MSD/HOLDING TANK OVERBOARD DISCHARGE SEA COCK:** Marelon. Operated satisfactorily. Not bonded. Double hose clamps installed.

**VENTED LOOP:** Yes.

**HOSES:** Satisfactory.

**SELECTOR VALVE:** Yes.

**AFT SANITARY SYSTEM:**

**MSD TYPE:** Raritan manual Type III MSD. Operation confirmed.

**FLUSHING WATER SEA COCK:** Marelon. Operated satisfactorily. Not bonded. Double hose clamps installed.

**MSD/HOLDING TANK OVERBOARD DISCHARGE SEA COCK:** Marelon. Operated satisfactorily. Not bonded. Double hose clamps installed.

**VENTED LOOP:** Yes.

**HOSES:** Satisfactory.

**SELECTOR VALVE:** Yes.

**FORWARD HOLDING TANK:**

**LOCATION:** Outboard shower in forward head.

**TANK MATERIAL:** Aluminum.

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CAPACITY: Unknown.  
SECURED: Yes.  
BAFFLED: Unknown.  
VENTED: Yes.  
HOSES: Satisfactory.  
HOLDING TANK PUMP: Manual; operation confirmed.  
DECK PUMPOUT LOCATION: Port forward.

**AFT HOLDING TANK:**

LOCATION: Port cockpit locker.  
TANK MATERIAL: Polyethylene  
CAPACITY: Unknown.  
SECURED: Yes.  
BAFFLED: Unknown.  
VENTED: Yes.  
HOSES: Satisfactory.  
HOLDING TANK PUMP: Manual; operation confirmed.  
DECK PUMPOUT LOCATION: Port aft.

**DEWATERING SYSTEMS:**

**TYPE/LOCATION:**

- Electric: Rule 2000 pump. Operation confirmed.
  - Integrated strainer/pickup with separate float switch.
  - Takes suction on main bilge.
  - Marelon sea cock operated satisfactorily. Not bonded. Single hose clamps installed.
- Manual: Whale pump.
  - Takes suction on main bilge.
  - Operated from cockpit.
- Manual: Whale pump.
  - Moveable suction hose to permit taking suction at any location.
  - Operated from cockpit locker.

**DISCHARGE LOCATION:**

- Electric: Port side amidships.
- Manual: Both combined to discharge at transom.

**CAPACITY:**

- Electric: 2000 gph.
- Manual: Unknown.

ELECTRIC PUMP CONTROLS: Manual/auto.

HIGH WATER/BILGE ALARMS: None observed.

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**6. ELECTRICAL SYSTEMS:**

**DC SYSTEM:**

SYSTEM VOLTAGE: 12 VDC.

BATTERIES:

- One Optima model 34M AGM; engine start bank.
- Two Concorde Lifeline group 31 AGM; house bank.

APPROVED CONTAINERS: Batteries in FRP trays; protective boots on battery terminals.

SECURED: Yes.

VENTILATION: Natural.

VAPOR PROOF SWITCH/ ISOLATOR: Yes.

DISTRIBUTION PANEL: Yes.

FUSES/BREAKERS: Breakers.

CONDITION OF WIRING, CABLES: Satisfactory where observed.

BATTERY CHARGER: Xantrex Freedom Marine 25. Operation confirmed.

CATHODIC PROTECTION: Promariner Prosafe ZincSaver 30.

**AC SYSTEM:**

SYSTEM VOLTAGE/AMPERAGE: 120 VAC / 30 amps.

DISTRIBUTION PANEL: Yes.

FUSES/BREAKERS: Breakers and fuses.

CONDITION OF WIRING, CABLES: Satisfactory where observed.

GFI CIRCUITS: Yes: galley and navigation desk. Trip tested satisfactorily. Outlets in both heads protected by galley GFCI outlet.

INVERTER: Xantrex Freedom Marine 25.

SHORE POWER:

- Polarity Indicator: Yes; on distribution panel.
- Connection Location: Transom. Cord plugs and transom receptacle corrosion free; no arcing damage.

**MISC. EQUIPMENT:**

LOUD HAILER: None.

SEARCHLIGHT: None.

**7. GENERATOR SYSTEM: None.**

**8. ELECTRONICS & NAVIGATION SYSTEMS:**

**NAVIGATION:**

MAGNETIC COMPASS: Ritchie 4" Powerdamp.

GPS: Furuno Navnet VX2 with C-Map NT Max. Operation confirmed.

RADAR: None.

KNOTMETER/LOG: nke. Operation confirmed.

DEPTH FINDER: nke. Operation confirmed.

WIND INDICATOR: nke. Operation confirmed.

AUTOPILOT: nke Gyropilot2 with Graphic Display at helm. Installation not complete.



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**DISPLAYS:** Four mast mounted multifunction displays, two sea hood mounted multifunction displays and analog wind display, one multifunction display at the navigation desk. Remote control unit at helm for the mast mounted displays.

**COMMUNICATIONS:**

VHF: Icom IC-M602 with remote HM-136B microphone. Operation confirmed.

SSB: None.

**ENTERTAINMENT:**

STEREO: None.

TV: None.

**MISC.:**

BAROMETER: None.

CLOCK: None.

**9. DOMESTIC SYSTEMS:**

**STOVE/OVEN:**

TYPE: Force 10, three burner with oven. Operation confirmed.

FUEL: Propane.

REMOTE SHUT OFF: Yes. Operation confirmed.

APPLIANCE SECURE: Yes.

GIMBALED: Yes.

PROPANE LOCKER: Compliant with ABYC Standard A-1.

– Location: Aft stbd in cockpit.

– Lid latch: Secure.

– Lid gasket: Satisfactory.

– Sealed electrical / fuel hose penetrations: Satisfactory; appear to be air/gas tight.

– Fuel hose: Approved.

– Drain: Hose runs downward to sea cock. See recommendations.

– Sea cock: Marelon. Sea cock secured in the open position; not operated. Not bonded. Double hose clamps installed.

– Improper stowage: None.

– Tanks: Two 10 lbs.

**REFRIGERATION:** Sea Frost model SP134 engine driven compressor.

**AIR CONDITIONER/HEATER:** None.

**MICROWAVE:** Tappen model TM7050S. Operation confirmed.

**10. SAFETY:**

**EQUIPMENT:**

PFDS: Yes; as required. Twelve adult Type I.

THROWABLE PFD (TYPE IV): Yes; as required. Sporting Lives inflatable Life Saver Buoy.

VISUAL DISTRESS SIGNALS: Yes; as required. Exceeds minimum requirements. Expiration for all: February 2010.

– Six handheld red day/night flares.

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- Six 12 gauge red meteor flares with pistol.
- Two handheld orange day smokes.

HORN/BELL: Air canister horn on board as required. Bell required but not observed. See recommendations.

FIRST AID KIT: Yes; as required.

EPIRB: None; not required.

LIFE RAFT: None; not required.

RADAR REFLECTOR: None; not required.

M.O.B POLE/LIGHT: None; not required.

NAVIGATION RULES: Required to be carried on vessels greater than 12 m in length; not observed. See recommendations.

**NAVIGATION LIGHTS:**

PORT/STBD/STERN: Yes; as required. Operation, relative bearing sectors, and range of visibility not observed.

MASTHEAD (STEAMING): Yes; as required. Operation, relative bearing sectors, and range of visibility not observed.

ANCHOR: Yes; as required. Operation, relative bearing sectors, and range of visibility not observed.

**REGULATION SIGNS:**

OIL DISCHARGE: Yes; as required.

TRASH DISPOSAL: Yes; as required.

**FIRE EXTINGUISHING EQUIPMENT:**

NUMBER/TYPE/LOCATION: Two USCG Type BC dry chemical, Size I portable extinguishers, with satisfactory pressure indication. Units are in navigation desk drawer, not bulkhead-mounted. See recommendations.

**ATMOSPHERE MONITORING:** None. See recommendations.

**11. MISCELLANEOUS:**

**DINGY/TENDER:** Not observed.

**CANVAS:**

SAIL COVER: Excellent condition.

COCKPIT DODGER: Excellent condition. Black with 1" stainless steel frame. Dodger/frame not installed.

COCKPIT CUSHIONS: Excellent condition.

LIFELINE CUSHIONS: Excellent condition.

AWNING: None.

WINTER COVER: None.

**12. SEA TRIAL:**

A sea trial approximately one hour in length was conducted to observe operation of the steering and engine controls, engine performance, electronic systems, and sail controls. All systems operated satisfactorily during the trial. A hydraulic oil leak was discovered in the hose to the boomvang as noted above.

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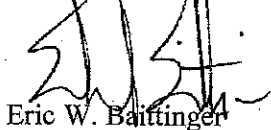
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**CONCLUSION**

Upon conclusion of the survey, the attending surveyor finds the vessel to be suitable to her intended purpose and acceptable for ocean marine insurance coverage to her fair market value pending compliance with the surveyor's recommendations.

This report is based on the opinions of the undersigned and covers items observed at the time of survey only. This survey report has been prepared and submitted in good faith. It is a description of the visible conditions then found. The surveyor assumes no responsibility for any defects and shall be held harmless for any subsequent conditions arising. No liability is assumed for errors or omissions of this report. It is agreed by all parties that this surveyor, these offices, and its heirs are indemnified and discharged of any and all liabilities that may arise there from. This report represents the unbiased finding of this office. This survey does not guarantee either expressed or implied, the condition of the above surveyed vessel.

Submitted without prejudice,



Eric W. Baittinger  
Surveyor Associate, SAMS®

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

TEXAS COMMUNITY BANK, N.A.

v.

M/V NEFTEGAZ, Her Engines, Tackle,  
Appurtenances, etc., *in rem*, and WILLIAM  
C. KELLEHER, *in personam*

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§  
§

CIVIL ACTION: 4:11-cv-00655  
ADMIRALTY

WAIVER OF SERVICE OF SUMMONS

TO: Charles W. Getman, Cokinos, Bosien & Young, Four Houston Center, 1221 Lamar Street, 16th Floor, Houston, Texas 77010-3039, attorney for Plaintiff Texas Community Bank, N.A.

I have received your request to waive service of a summons in this action along with a copy of the complaint, two copies of this waiver form, and a prepaid means of returning one signed copy of the form to you.

I, or the entity I represent, agree to save the expense of serving a summons and complaint in this case.

I understand that I, or the entity I represent, will keep all defenses or objections to the lawsuit, the court's jurisdiction, and the venue of the action, but that I waive any objections to the absence of a summons or of service.

I also understand that I, or the entity I represent, must file and serve an answer or a motion under Rule 12 within 60 days from March 1, 2011, the date when this request was sent. If I fail to do so, a default judgment will be entered against me or the entity I represent.

Date 5/2/11

[Signature]  
Signature of Attorney or Unrepresented Party

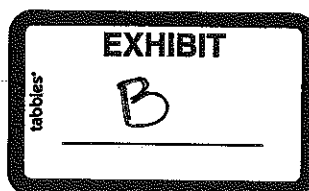
William Kelleher  
Printed Name of Party

William Kelleher  
Printed Name

18 Mariners Lane, Kemah, TX -  
Address 77565

WKelleher@aol.com  
Email Address

713 447 2171  
Telephone Number





**Getman, Charles**

---

**From:** William Kelleher [wkelleher@aol.com]  
**Sent:** Tuesday, April 19, 2011 5:14 AM  
**To:** Getman, Charles  
**Subject:** Re: TCB

Dear Mr Getman,

The following is my full contact information:

Address:  
18 Mariners Lane  
Kemah Texas 77565

Contact number:  
T: 713 447 2171  
[Wkelleher@aol.com](mailto:Wkelleher@aol.com)  
Skype: William.kelleher1

I am not in receipt of your complaint as it may have fallen into my spam file and been deleted. Can you please resend it please.

I will respond by May 2nd and plan to attend the conference set by the court on May 20, 2011.

Best regards

Bill Kelleher

On Apr 18, 2011, at 9:45 AM, Getman, Charles wrote:

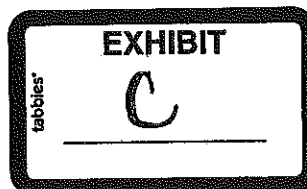
Mr. Kelleher:  
Please read and respond to my attached letter regarding the Texas Community Bank lawsuit.  
Thank you  
Charles Getman


<cwg.gif>

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5/12/2011



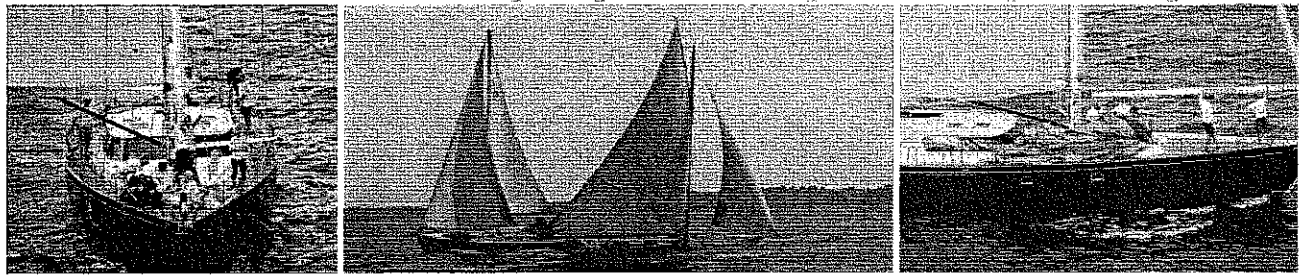

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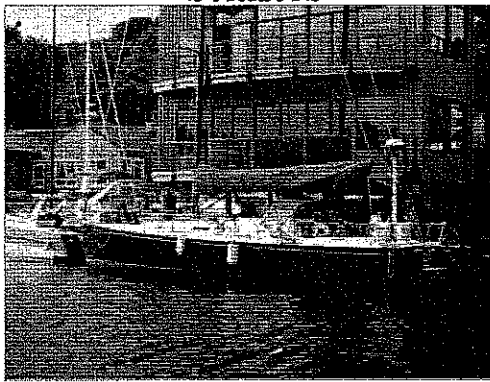
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**Price:** \$700,000  
**Hull:** Composite  
**Fuel:** Diesel  
  
**Description:**  


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